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Supreme Court, U.S.
FILED
SEP 15 1958
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 146

ELIE P. AGHNIDES,

Petitioner,

against

MARGOT E. AGHNIDES,

Respondent.

REPLY TO RESPONDENT'S BRIEF.

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Petitioner has asked for certiorari herein upon the grounds that

(1) Interstate injunctions against prosecution of foreign suits never have been given *carte-blanche* approval by this Court and are now, in the light of recent decisions of this Court, unconstitutional interference where the foreign suit is for absolute divorce and the local judgment to be protected is a judgment of separation only;

(2) the instant injunction denies due process because the judgment it attempts to protect applied conflict-of-laws rules previously held unconstitutional by this Court, and a New York statute which is unconstitutional as applied;

(3) the instant injunction denies full faith and credit to a prior judicial decision between the same parties in Indiana as well as to statutory enactments of that state;

(4) the instant injunction is a denial of due process of law because it is expressly based upon the false proposition that the issue of fraud in the Indiana action enjoined had already been adjudicated in the prior New York separation action against the Petitioner.

Respondent fails, in the slightest, to dispute Petitioner's analysis, summarized above, of the Constitutional issues involved herein. Nor does Respondent question any previous ruling of this Court cited in the Petition as controlling those issues.

Respondent has ignored (1), (2) and (3) above, which, alone, call for certiorari, and addressed herself solely to (4). As to (4), Respondent contends that Petitioner has incorrectly read the record in the prior New York separation action and reasserts what she led the Court in the injunction suit to believe, *viz.*, that in the prior suit it was held that the Respondent was not guilty of fraud and that the judgment therein is therefore *res judicata* of the Indiana action.

Respondent attempts to substantiate that contention by invoking an order of one Justice of the Appellate Division in the Separation Action (Resp. App., p. 11). At least Respondent does not attempt to tell this Court what she told the Trial Court in the injunction suit, *viz.*, that the New York Court of Appeals had found Respondent not guilty of fraud. She has now changed her tune. She admits that it did not. Now she says that an order of one Appellate Division Justice so found, and gratuitously asserts that the Petition herein was prepared in ignorance of that order. Certainly the Trial Court in the injunction suit ruled without referring to the said order but Respondent may rest assured that Petitioner has been well aware of the same from the beginning and would never, on a

partial record, have categorically informed this Court that the record in the separation action shows conclusively that not only is it not *res judicata* of the absence of fraud on the part of the wife but exactly the reverse."

That statement is still true and the order now cited does nothing to change it. If Respondent is confused by the said order it is because it does state that Respondent was not guilty of fraud, but the fraud A talks about is fraud in her offer to return. Of course the New York Courts held that she was not guilty of fraud in offering to return; otherwise they could not have granted her a separation. That is the only fraud referred to in the order cited. The fraud which the Trial Court in the Injunction Suit referred to, and upon the absence of which it based its injunction, is fraud at the inception of the marriage calling for annulment. The New York Courts held Respondent guilty of such fraud and would have granted annulment if they had not mistakenly applied New York law to the issue of condonation. In that event they would never have reached the question of fraud tainting Respondent's offer to return. Such fraud is relevant only to separation. Even the order, itself, appearing in Respondent's Appendix at pp. 11-12 shows clearly that it is discussing fraud in the offer to return, and not fraud in the inception.

Since the opinion of the Appellate Division in the separation action unequivocally affirms the Trial Court's decision that Respondent was guilty of fraud (Pet. App. C, p. 52) it is ridiculous to imagine that one Justice of that Court presumed by his own order to change the decision. It has not been explained by Respondent how this particular order—even were it to the effect desired by Respondent—could overrule the decision of five judges. The answer is not only that it could not but that it did not, does not even

by its words purport to do so, and that it is not even ambiguous. Even if ambiguity could be shown it would be the duty of this Court under its own ruling in *Postal Telegraph Cable Co.* v. *City of Newport, Kentucky*, 247 U. S. 464 (1918), to grant certiorari and determine for itself whether the one record is *res adjudicata* of the other.

If any doubt lingered about the intent of the said order of the one Appellate Division Justice, it should be completely eliminated by Respondent's own characterization of the decision of the Appellate Division contained in Respondent's brief on the appeal therefrom to the New York Court of Appeals. In that brief, subscribed by the same attorney who represents Respondent here, Respondent in a paragraph on the last page thereof entitled "Conclusion" summarizes the decision of the Appellate Division as follows:

> "The Appellate Division has held that Mrs. Aghnides did not abandon her husband and that commencing less than two weeks after her departure for a fortnight's visit with her parents, she repeatedly pleaded for a preservation of the marriage and made unconditional and unequivocal offers to return. It held also that the offers were made without fraud or improper reservation. Having then found that defendant, without justification, rejected such offers, the Appellate Division should not only have reversed the judgment in favor of the husband and dismissed his counterclaims, it should also have granted a separation in favor of the wife."

In other words, the only fraud dealt with by the Appellate Division was fraud in the offer to return. We learn that from Respondent's own words to the Court of Appeals. Respondent did not say otherwise to the Trial Court which

issued the injunction. To that Court Respondent contended that the Court of Appeals absolved her of fraud in the inception. Now it is admitted that that Court not only did not but could not. So reliance is thrown upon a simple order of one Justice which could not, if it meant to, change the Appellate Division decision.

Respondent's brief thus comes to nothing.

This is an important case in its legal implications and the jurisprudence that it will properly invoke will serve the entire country and quiet yet another phase of potential litigation in marital affairs.

But it must not be overlooked that the case is important for the injustice that has been done the Petitioner, a distinguished scientist and inventor who was shown by the record in this case to be an exemplar of uprightness as a man and as a husband. But the Courts of New York have been used to exploit him mercilessly by an ungrateful and avaricious woman. Upon the law it is clear that it is the duty of this Court to correct that, and upon the facts, it should be its pleasure.

Respectfully submitted,

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